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PART II—Section 2

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

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इस भाग में भिन्न पृष्ठ संख्याएँ जाती हैं जिससे कि यह प्रलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation.

LOK SABHA

The Following Bills were introduced in Lok Sabha on the 23rd December, 1967:—

BILL No. 174 OF 1967

A Bill further to amend the Banking Regulation Act, 1949, so as to provide for the extension of social control over banks and for matters connected therewith or incidental thereto, and also further to amend the Reserve Bank of India Act, 1934, and the State Bank of India Act, 1955.

Be it enacted by Parliament in the Eighteenth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

5. 1. (1) This Act may be called the Banking Laws (Amendment) Act, 1967. Short title
and com-
mence-
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of the Act.

CHAPTER II

AMENDMENTS TO THE BANKING REGULATION ACT, 1949

Amend-
ment of
section 5

2. In the Banking Regulation Act, 1949 (hereinafter in this Chapter referred to as the principal Act), in section 5,—

10 of 1949

(i) after clause (c), the following clause shall be inserted, 5
namely:—

‘(ca) “banking policy” means any policy which is specified from time to time by the Reserve Bank in the interests of the depositors or of the banking system or in the interests of monetary stability or sound economic growth, having regard to the volume of deposits and other resources of banks, and the need for the equitable allocation and efficient use of these deposits and resources;’;

(ii) after clause (g), the following clause shall be inserted, 15
namely:—

‘(gg) “managing agent” includes,—

(i) secretaries and treasurers,

(ii) where the managing agent is a company, any director of such company, and any member thereof who holds substantial interest in such company, 20

(iii) where the managing agent is a firm, any partner of such firm;’;

(iii) after clause (n), the following clauses shall be inserted, 25
namely:—

‘(na) “small-scale industrial concern” means an industrial concern in which the investment in plant and machinery is not in excess of seven and a half lakhs of rupees or such higher amount, not exceeding fifteen lakhs of rupees, as the Central Government may, by notification in the Official Gazette, specify in this behalf, having regard to the trends 30 in industrial development and other relevant factors;

(nb) “subsidiary bank” has the meaning assigned to it in the State Bank of India (Subsidiary Banks) Act, 1959; 38 of 1959

(nc) “substantial interest”,—

(i) in relation to a company, means the holding of 35 a beneficial interest by an individual or his spouse or minor child, whether singly or taken together, in the shares thereof, the amount paid-up on which exceeds five lakhs of rupees or five per cent. of the paid-up capital of the company, whichever is less;

40

5

(ii) in relation to a firm, means the beneficial interest held therein by an individual or his spouse or minor child, whether singly or taken together, which represents more than five per cent. of the total capital subscribed by all the partners of the said firm;.

3. After section 10 of the principal Act, the following sections shall be inserted, namely:—

Insertion
of new
sections
10A, 10B,
10C and
10D

“10A. (1) Notwithstanding anything contained in any other law for the time being in force, every banking company,—

10 (a) in existence on the commencement of section 3 of the Banking Laws (Amendment) Act, 1967, or
(b) which comes into existence thereafter, shall comply with the requirements of this section:

15 Provided that nothing contained in this sub-section shall apply to a banking company referred to in clause (a) for a period of three months from such commencement.

(2) Not less than fifty-one per cent. of the total number of members of the Board of directors of a banking company shall consist of persons, who—

20 (a) shall have special knowledge or practical experience in respect of one or more of the following matters, namely:—
(i) accountancy,
(ii) agriculture and rural economy,
(iii) banking,
(iv) co-operation,
(v) economics,
(vi) finance,
(vii) law,
(viii) small-scale industry.

25 (ix) any other matter the knowledge and experience in which would, in the opinion of the Reserve Bank, be useful to the banking company:

30 Provided that out of the aforesaid number of directors, not less than two shall be persons having special knowledge or practical experience in respect of agriculture and rural economy, co-operation or small-scale industry; and

Board of
directors
to include
persons
with pro-
fessional
or other
experience

(b) shall not—

(1) have substantial interest in, or be connected with, whether as employee, manager or managing agent,—

(i) any company, not being a company registered under section 25 of the Companies Act, 1956, or ⁵ 1 of 1956.

(ii) any firm,

which carries on any trade, commerce or industry and which, in either case, is not a small-scale industrial concern, or

(2) be proprietors of any trading, commercial or industrial concern, not being a small-scale industrial concern.

(3) If, in respect of any banking company, the requirements, as laid down in sub-section (2), are not fulfilled at any time, the Board of directors of such banking company shall re-constitute ¹⁵ such Board so as to ensure that the said requirements are fulfilled.

(4) If, for the purpose of re-constituting the Board under sub-section (3), it is necessary to retire any director or directors, the Board may, by lots drawn in such manner as may be prescribed, decide which director or directors shall cease to hold office and such decision shall be binding on every director of the Board.

(5) Where the Reserve Bank is of opinion that the composition of the Board of directors of a banking company is such that it does not fulfil the requirements of sub-section (2), it may, ²⁵ after giving to such banking company a reasonable opportunity of being heard, by an order in writing, direct the banking company to so re-constitute its Board of directors as to ensure that the said requirements are fulfilled and, if within two months from the date of receipt of that order, the banking company does not comply with the directions made by the Reserve Bank, that Bank may, after determining, by lots drawn in such manner as may be prescribed, the person who ought to be removed from the membership of the Board of directors, remove such person from the office of the director of such banking company and with a view to complying with the provisions of sub-section (2), appoint a suitable person as a member of the Board of directors in the place of the person so removed whereupon the person so appointed shall be deemed to have been duly elected by the banking company as its director.

(6) Every appointment, removal or reconstitution made, and every election duly held, under this section shall be final and shall not be called into question in any court.

5 (7) Every director elected or, as the case may be, appointed under this section shall hold office until the date up to which his predecessor would have held office, if the election had not been held, or, as the case may be, the appointment had not been made.

10 (8) No act or proceeding of the Board of directors of a banking company shall be invalid by reason only of any defect in the composition thereof or on the ground that it is subsequently discovered that any of its members did not fulfil the requirements of this section.

15 10B. (1) Notwithstanding anything contained in any law for Banking company the time being in force or in any contract to the contrary, every company to be banking company in existence on the commencement of section managed 3 of the Banking Laws (Amendment) Act, 1967, or which comes by whole- into existence thereafter shall have a chairman of its Board of time directors who shall be entrusted with the management of the chairman. whole of the affairs of the banking company:

20 Provided that nothing in this sub-section shall apply to a banking company in existence on the commencement of the said section for a period of three months from such commencement.

25 (2) Every chairman of the Board of directors of a banking company shall be in the whole-time employment of such company and shall hold office for such period, not exceeding five years, as the Board of directors may fix, but shall, subject to the provisions of this section, be eligible for re-election or re-appointment:

30 Provided that nothing in this sub-section shall be construed as prohibiting a chairman from being a director of a subsidiary of the banking company or a director of a company registered under section 25 of the Companies Act, 1956.

35 1 of 1956. (3) Every person holding office on the commencement of section 3 of the Banking Laws (Amendment) Act, 1967, as managing director of a banking company shall—

40 (a) if there is a chairman of its Board of directors, vacate office on such commencement, or

(b) if there is no chairman of its Board of directors, vacate office on the date on which the chairman of its Board of directors is elected or appointed in accordance with the provisions of this section.

(4) Every chairman of the Board of directors of a banking company shall be a person who has special knowledge and practical experience of—

(a) the working of a banking company, or of the State Bank of India or any subsidiary bank or a financial institution, or

(b) financial, economic or business administration:

Provided that a person shall be disqualified for being a chairman, if he—

(a) is a director of any company other than a company referred to in the proviso to sub-section (2), or

(b) is a partner of any firm which carries on any trade, business or industry, or

(c) has substantial interest in any other company or firm, or

(d) is a director, manager, managing agent, partner or proprietor of any trading, commercial or industrial concern, or

(e) is engaged in any other business or vocation.

(5) A chairman of the Board of directors of a banking company may, by writing under his hand addressed to the company, resign his office but shall continue in office until his successor assumes office.

(6) Without prejudice to the provisions of section 36AA, where the Reserve Bank is of opinion that any person who is, or has been elected to be, the chairman of the Board of directors of a banking company is not a fit and proper person to hold such office, it may, after giving to such person a reasonable opportunity of being heard, by order in writing, require the banking company to elect or appoint any other person as the chairman of its Board of directors and if, within a period of two months from the date of receipt of such order, the banking company fails to elect or appoint a suitable person as the chairman of its Board of directors, the Reserve Bank may, by order, remove the first-mentioned person from the office of the chairman of the Board of directors of the banking company and appoint a suitable person in his place whereupon the person so appointed shall be deemed to have been duly elected or appointed, as the case may be, as the chairman of the Board of directors of such banking company and any person elected or appointed as chairman under this sub-section shall hold office for the residue of the period of office of the person in whose place he has been so elected or appointed.

(7) Any person against whom an order of removal is made under sub-section (6) may, within thirty days from the date of communication to him of the order, prefer an appeal to the Central Government and the decision of the Central Government thereon, and subject thereto, the order made by the Reserve Bank under sub-section (6), shall be final and shall not be called into question in any court.

(8) Notwithstanding anything contained in this section, the Reserve Bank may, if in its opinion it is necessary in the public interest so to do, permit the chairman to undertake such part-time honorary work as is not likely to interfere with his duties as such chairman.

10C. Any director or chairman appointed by the Reserve Bank under section 10A or section 10B, as the case may be, shall not be required to hold qualification shares in the banking company.

Chairman
or
Director
appointed
by the
Reserve
Bank not
to be
required
to hold
qualification
shares.

10D. Any appointment or removal of a director or chairman in pursuance of section 10A or section 10B shall have effect and any such person shall not be entitled to claim any compensation for the loss or termination of office, notwithstanding anything contained in any law or in any contract, memorandum or articles of association.”.

Provisions
of sections
10A and
10B to
over-ride
contracts,
etc.

4. In section 16 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

Amend-
ment of
section
16.

25 “(3) Nothing in sub-section (1) shall apply to, or in relation to, any director appointed by the Reserve Bank.”.

5. For section 20 of the principal Act, the following section shall be substituted, namely:—

Substitu-
tion of
new sec-
tion for
section 20.

Restrictions on loans and advances.

"20. (1) Notwithstanding anything to the contrary contained in section 77 of the Companies Act, 1956, no banking company shall, after the commencement of section 5 of the Banking Laws (Amendment) Act, 1967,—

1 Oct. 1968.

(a) grant any loans or advances on the security of its own shares, or

(b) grant any loans or advances to, or give or renew any guarantee on behalf of,—

(i) any of its directors, or

(ii) any firm in which any of its directors is interested as partner, manager, employee or guarantor, or

(iii) any company of which any of the directors of the banking company is director, managing agent, manager, employee or guarantor or in which he holds substantial interest, or

(iv) any individual in respect of whom any of its directors is a partner or guarantor.

(2) Where any loan granted before the commencement of section 5 of the Banking Laws (Amendment) Act, 1967, is such that the loan could not have been granted if the said section were in force on the date on which such loan was granted, then steps shall be taken to recover the loan, together with interest, if any, due thereon—

(a) within the period stipulated for the re-payment of the loan, or

(b) within a period of three years from such commencement, where no period has been stipulated for the re-payment of the loan.

(3) No loan referred to in sub-section (2) or any part thereof shall be remitted without the previous approval of the Reserve Bank, and any remission without such approval shall be void and of no effect.

(4) Where any loan referred to in sub-section (2), payable by any person, has not been re-paid to the banking company within the period specified in that sub-section, then such person shall, if he is a director of such banking company on the date of the expiry of the said period, be deemed to have vacated his office as such on the said date."

6. In section 21 of the principal Act, in sub-section (1), after the words "in the interests of depositors", the words "or banking policy" shall be inserted. Amendment of section 21.

7. In section 24 of the principal Act, in sub-section (2A), in sub-
5 clause (iii) of clause (b), for the words "any balances maintained by a scheduled bank with the State Bank of India", the words "any balances in current account maintained in India by a scheduled bank with the State Bank of India" shall be substituted. Amendment of section 24.

8. In section 30 of the principal Act, after sub-section (1), the
10 following sub-sections shall be inserted, namely:— Amendment of section 30.

15

"(1A) Notwithstanding anything contained in any law for the time being in force or in any contract to the contrary, every banking company shall, before appointing, re-appointing or removing any auditor or auditors, obtain the previous approval of the Reserve Bank.

1 of 1956.

20

(1B) Without prejudice to anything contained in the Companies Act, 1956, or any other law for the time being in force, where the Reserve Bank is of opinion that it is necessary in the public interest or in the interests of the banking company or its depositors so to do, it may direct the auditor of the banking company to audit the accounts of the banking company in relation to any transaction or class of transactions specified in the order, and the auditor shall comply with such directions and make a report of such audit to the Reserve Bank and forward a copy thereof to the company.

25

(1C) The expenses of, or incidental to, the audit of the transaction or class of transactions specified in the order made by the Reserve Bank shall be borne by the banking company.".

38 of 1959.

9. In section 34A of the principal Act, in sub-section (3), the words, brackets and figures "as defined in the State Bank of India (Subsidiary Banks) Act, 1959" shall be omitted. Amendment of section 34A.

10. In section 35A of the principal Act, in sub-section (1), after clause (a), the following clause shall be inserted, namely:— Amendment of section 35A.

"(aa) in the interest of banking policy; or".

35

11. In section 35B of the principal Act,— Amendment of section 35B.

(a) in sub-section (1),—

(i) in clause (a), for the words "appointment or re-appointment or remuneration of a", the words "appointment

or re-appointment or termination of appointment or remuneration of a chairman, a" shall be substituted;

(ii) for clause (b), the following clause shall be substituted, namely:—

“(b) no appointment or re-appointment or termination of appointment of a chairman, a managing or whole-time director, manager or chief executive officer by whatever name called, shall have effect unless such appointment, re-appointment or termination of appointment is made with the previous approval of the Reserve Bank.”;

(iii) in the *Explanation*, for the words “of the manager”, the words “of the chairman or the manager” shall be substituted;

(b) in sub-section (3), for the words “as a managing or whole-time director”, the words “as chairman or a managing or whole-time director” shall be substituted and for the word “appointment”, wherever it occurs, the words “appointment or re-appointment” shall be substituted.

Amend-
ment of
section

36.

12. In section 36 of the principal Act, in sub-section (1), in clause (d),—

(i) for the words and figures “during the course, or after the completion, of any inspection of a banking company under section 35,”, the words “at any time, if it is satisfied that in the public interest or in the interest of banking policy or for preventing the affairs of the banking company being conducted in a manner detrimental to the interests of the banking company or its depositors it is necessary so to do,” shall be substituted;

(ii) in sub-clause (v), the words “in consequence of the state of affairs disclosed during or by the inspection” shall be omitted.

Amend-
ment of
section
36AA

13. In section 36AA of the principal Act,—

(a) in sub-section (1),—

(i) after the words “public interest”, the words “or in the interest of banking policy” shall be inserted;

(ii) for the words “any director,”, the words “any chairman, director,” shall be substituted;

(b) in sub-section (2),—

(i) for the words “unless the director”, the words “unless the chairman, director” shall be substituted; 40

(ii) in the proviso—

5 (a) for the words “the director or, as the case may be, chief executive officer”, the words “the chairman or, as the case may be, director or chief executive officer” shall be substituted; .

(b) in clause (a), for the words “act as such director”, the words “act as such chairman or director” shall be substituted;

10 (c) in sub-section (4),—

(i) for the words “a director”, where they occur for the first time, the words “a chairman, director” shall be substituted;

15 (ii) for the words “a director or, as the case may be,”, the words “a chairman or, as the case may be, a director” shall be substituted;

(d) in sub-section (6), for the words “the director”, the words “the chairman or director” shall be substituted;

20 (e) in sub-section (7), for the words “director or chief executive officer”, wherever they occur, the words “chairman, director or chief executive officer” shall be substituted.

14. In section 36AB of the principal Act, in sub-section (1), for the words “opinion that”, the words “opinion that in the interest of banking policy or in the public interest or” shall be substituted.

Amendment of
section
36AB.

15. After Part IIA of the principal Act, the following Parts shall 25 be inserted, namely:—

Insertion
of new
Parts IIB
and IIC.

PART IIB

PROHIBITION OF CERTAIN ACTIVITIES IN RELATION TO BANKING COMPANIES

36AD. (1) No person shall—

Punish-
ments for
certain
activities
in relation
to bank-
ing com-
panies.

30 (a) obstruct any person from entering any office or place of business of a banking company or from carrying on any business there, or

35 (b) hold any demonstration (including shouting any slogan) which is indecent or which amounts to the commission, or incitement to the commission, of any offence, within the precincts of, or inside, any building in which the office or place of business of any banking company is situated or within ten metres from any entrance to or exit from such building, or

40 (c) act in any manner calculated to undermine the creditworthiness of any banking company.

(2) Whoever contravenes any provision of sub-section (1) without any reasonable excuse shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(3) No court shall take cognizance of any offence punishable under sub-section (2) except on a complaint in writing made to it by the Reserve Bank or by any person authorised by it in this behalf. 5

(4) For the purposes of this section, "banking company" includes the Reserve Bank, the Industrial Development Bank ¹⁰ of India, the State Bank of India, and any subsidiary bank.

PART IIC

ACQUISITION OF THE UNDERTAKINGS OF BANKING COMPANIES IN CERTAIN CASES

Power of Central Government to acquire undertakings of banking companies in certain cases.

36AE. (1) If, upon receipt of a report from the Reserve ¹⁵ Bank, the Central Government is satisfied that a banking company—

- (a) has persistently failed to comply with the directions given to it under section 21, section 35 or section 35A, or
- (b) is being managed in a manner detrimental to the ²⁰ interests of its depositors,—

and that—

- (i) in the interests of the depositors of such banking company, or
- (ii) in the interest of banking policy, or ²⁵
- (iii) for the better provision of credit generally or of credit to any particular section of the community or in any particular area,

it is necessary to acquire the undertaking of such banking company, the Central Government may, after such consultation ³⁰ with the Reserve Bank as it thinks fit, by notified order, acquire the undertaking of such company (hereinafter referred to as the acquired bank) with effect from such date as may be specified in this behalf by the Central Government (hereinafter referred to as the appointed day); ³⁵

Provided that no undertaking of any banking company shall be so acquired unless such banking company has been given a reasonable opportunity of showing cause against the proposed action.

5 *Explanation.— In this Part,—*

(a) "notified order" means an order published in the Official Gazette;

10 (b) "undertaking", in relation to a banking company incorporated outside India, means the undertaking of the company in India.

(2) Subject to the other provisions contained in this Part, on the appointed day, the undertaking of the acquired bank and all the assets and liabilities of the acquired bank shall stand transferred to, and vest in, the Central Government.

15 (3) The undertaking of the acquired bank and its assets and liabilities shall be deemed to include all rights, powers, authorities and privileges and all property, whether movable or immovable, including, in particular, cash balances, reserve funds, investments, deposits and all other interests and rights in, or arising out of, such property as may be in the possession of, or held by, the acquired bank immediately before the appointed day and all books, accounts and documents relating thereto, and shall also be deemed to include all debts, liabilities and obligations, of whatever kind, then existing of the acquired bank.

25 (4) Notwithstanding anything contained in sub-section (2), the Central Government may, if it is satisfied that the undertaking of the acquired bank and its assets and liabilities should, instead of vesting in the Central Government, or continuing to so vest, vest in a company established under any scheme made under this Part or in any corporation (hereinafter in this Part and in the Fifth Schedule referred to as the transferee bank) that Government may, by order, direct that the said undertaking, including the assets and liabilities thereof, shall vest in the transferee bank either on the publication of the notified order or on such other date as may be specified in this behalf by the Central Government.

30 (5) Where the undertaking of the acquired bank and the assets and liabilities thereof vest in the transferee bank under

sub-section (4), the transferee bank shall, on and from the date of such vesting, be deemed to have become the transferee of the acquired bank and all the rights and liabilities in relation to the acquired bank shall, on and from the date of such vesting, be deemed to have been the rights and liabilities of the transferee bank.

(6) Unless otherwise expressly provided by or under this Part, all contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature subsisting or having effect immediately before the appointed day and to which the acquired bank is a party or which are in favour of the acquired bank shall be of as full force and effect against or in favour of the Central Government, or as the case may be, of the transferee bank, and may be enforced or acted upon as fully and effectually as if in the place of the acquired bank the Central Government or the transferee bank had been a party thereto or as if they had been issued in favour of the Central Government or the transferee bank, as the case may be.

(7) If, on the appointed day, any suit, appeal or other proceeding of whatever nature is pending by or against the acquired bank, the same shall not abate, be discontinued or be, in any way, prejudicially affected by reason of the transfer of the undertaking of the acquired bank or of anything contained in this Part, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the Central Government or the transferee bank, as the case may be.

Power of
the Central
Government
to make
scheme.

36AF. (1) The Central Government may, after consultation with the Reserve Bank, make a scheme for carrying out the purposes of this Part in relation to any acquired bank.

(2) In particular, and without prejudice to the generality of the foregoing power, the said scheme may provide for all or any of the following matters, namely:—

(a) the corporation, or the company incorporated for the purpose, to which the undertaking including the property, assets and liabilities of the acquired bank may be transferred, and the capital, constitution, name and office thereof;

(b) the constitution of the first Board of management (by whatever name called) of the transferee bank, and all such matters in connection therewith or incidental thereto

as the Central Government may consider to be necessary or expedient;

(c) the continuance of the services of all the employees of the acquired bank (excepting such of them as, not being workmen within the meaning of the Industrial Disputes Act, 1947, are specifically mentioned in the scheme) in the Central Government or in the transferee bank, as the case may be, on the same terms and conditions so far as may be, as are specified in clauses (i) and (j) of sub-section (5) of section 45;

(d) the continuance of the right of any person who, on the appointed day, is entitled to or is in receipt of, a pension or other superannuation or compassionate allowance or benefit, from the acquired bank or any provident, pension or other fund or any authority administering such fund, to be paid by, and to receive from, the Central Government or the transferee bank, as the case may be, or any provident, pension or other fund or any authority administering such fund, the same pension, allowance or benefit so long as he observes the conditions on which the pension, allowance or benefit was granted, and if any question arises whether he has so observed such conditions, the question shall be determined by the Central Government and the decision of the Central Government thereon shall be final;

(e) the manner of payment to the shareholders of the acquired bank in full satisfaction of their claim of the compensation payable in accordance with the provisions of this Part;

(f) the provision, if any, for completing the effectual transfer to the Central Government or the transferee bank of any asset or any liability which forms part of the undertaking of the acquired bank in any country outside India;

(g) such incidental, consequential and supplemental matters as may be necessary to secure that the transfer of the business, property, assets and liabilities of the acquired bank to the Central Government or transferee bank, as the case may be, is effectual and complete.

(3) The Central Government may, after consultation with the Reserve Bank, by notification in the Official Gazette, add to, amend or vary any scheme made under this section.

(4) Every scheme made under this section shall be published in the Official Gazette.

(5) Copies of every scheme made under this section shall be laid before each House of Parliament as soon as may be after it is made.

(6) The provisions of this Part and of any scheme made thereunder shall have effect notwithstanding anything to the contrary contained in any other provisions of this Act or in any other law or any agreement, award or other instrument for the time being in force.

(7) Every scheme made under this section shall be binding on the Central Government or, as the case may be, on the transferee bank and also on all members, creditors, depositors and employees of the acquired bank and of the transferee bank and on any other person having any right, liability, power or function in relation to, or in connection with, the acquired bank or the transferee bank, as the case may be.

Compens-
ation to
be given
to share-
holders of
the ac-
quired
bank.

36AG. (1) Every person who, immediately before the appointed day, is registered as a holder of shares in the acquired bank shall be given by the Central Government, or the transferee bank, as the case may be, such compensation in respect of the transfer of the undertaking of the acquired bank as is determined in accordance with the principles contained in the Fifth Schedule.

(2) Nothing contained in sub-section (1) shall affect the rights *inter se* between the holder of any share in the acquired bank and any other person who may have any interest in such shares and such other person shall be entitled to enforce his interest against the compensation awarded to the holder of such share, but not against the Central Government, or the transferee bank.

(3) The amount of compensation to be given in accordance with the principles contained in the Fifth Schedule shall be determined in the first instance by the Central Government, or the transferee bank, as the case may be, in consultation with the Reserve Bank, and shall be offered by it to all those to whom compensation is payable under sub-section (1) in full satisfaction thereof.

(4) If the amount of compensation offered in terms of sub-section (3) is not acceptable to any shareholder of the acquired bank, such shareholder may, before such date as may be notified by the Central Government in the Official Gazette, request the Central Government in writing, to have the matter referred to the Tribunal constituted under section 36AH.

(5) If, before the date notified under sub-section (4), the Central Government receives requests, in terms of that sub-

section, from not less than one-fourth in number of the shareholders holding not less than one-fourth in value of the paid-up share capital of the acquired bank, the Central Government shall have the matter referred to the Tribunal for decision.

5 (6) If, before the date notified under sub-section (4), the Central Government does not receive requests as provided in that sub-section, the amount of compensation offered under sub-section (3), and where a reference has been made to the Tribunal, the amount determined by it, shall be the compensation payable under sub-section (1) and shall be final and binding on all parties concerned.

10 36AH. (1) The Central Government may, for the purpose of Constitution of the this Part, constitute a Tribunal which shall consist of a Chairman and two other members.

15 (2) The Chairman shall be a person who is, or has been, a Judge of a High Court or of the Supreme Court, and, of the two other members, one shall be a person, who, in the opinion of the Central Government, has had experience of commercial banking and the other shall be a person who is a chartered accountant within the meaning of the Chartered Accountants' Act, 1949.

20 38 of 1949. 20 (3) If, for any reason, a vacancy occurs in the office of the Chairman or any other member of the Tribunal, the Central Government may fill the vacancy by appointing another person there-to in accordance with the provisions of sub-section (2), and any proceeding may be continued before the Tribunal, so constituted, from the stage at which the vacancy occurred.

25 . (4) The Tribunal may, for the purpose of determining any compensation payable under this Part, choose one or more persons having special knowledge or experience of any relevant matter to assist it in the determination of such compensation.

30 5 of 1908. (1) The Tribunal shall have the powers of a civil Tribunal court, while trying a suit, under the Code of Civil Procedure, to have 1908, in respect of the following matters, namely:— powers of a civil

- 35 (a) summoning and enforcing the attendance of any court person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents.

(2) Notwithstanding anything contained in sub-section (1), or in any other law for the time being in force, the Tribunal shall not compel the Central Government or the Reserve Bank,—

(a) to produce any books of account or other documents which the Central Government, or the Reserve Bank, claims to be of a confidential nature; 5

(b) to make any such books or documents part of the record of the proceedings before the Tribunal; or

(c) to give inspection of any such books or documents to any party before it or to any other person. 10

Procedure of the Tribunal.

36AJ. (1) The Tribunal shall have power to regulate its own procedure.

(2) The Tribunal may hold the whole or any part of its inquiry *in camera*.

(3) Any clerical or arithmetical error in any order of the Tribunal or any error arising therein from any accidental slip or omission may, at any time, be corrected by the Tribunal either of its own motion or on the application of any of the parties.' 15

Amendment of section 39.

16. Section 39 of the principal Act shall be re-numbered as sub-section (1) thereof and after sub-section (1), as so re-numbered, the following sub-section shall be, and shall be deemed always to have been, inserted, namely:— 20

"(2) Subject to such directions as may be made by the High Court, the remuneration of the official liquidator appointed under this section, the cost and expenses of his establishment and the cost and expenses of the winding up shall be met out of the assets of the banking company which is being wound up, and notwithstanding anything to the contrary contained in any other law for the time being in force, no fees shall be payable to the Central Government, out of the assets of the banking company.". 25 30

Insertion of new section 47A.

17. After section 47 of the principal Act, the following section shall be inserted, namely:—

Power of Reserve Bank to

"47A. (1) Notwithstanding anything contained in section 46, if a contravention or default of the nature referred to in sub-section (3) or sub-section (4) of section 46, as the case may be,

is made by a banking company, then, the Reserve Bank ~~may impose~~ ~~penalty.~~ may impose on such banking company—

5 (a) where the contravention is of the nature referred to in sub-section (3) of section 46, a penalty not exceeding twice the amount of the deposits in respect of which such contravention was made;

10 (b) where the contravention or default is of the nature referred to in sub-section (4) of section 46, a penalty not exceeding two thousand rupees; and where such contravention or default is a continuing one, a further penalty which may extend to one hundred rupees for every day, after the first, during which the contravention or default continues.

15 (2) For the purpose of adjudging the penalty under sub-section (1), the Reserve Bank shall hold an inquiry in the prescribed manner after giving the banking company a reasonable opportunity of being heard.

20 (3) While holding an inquiry under this section, the Reserve Bank shall have power to summon and enforce the attendance of any person to give evidence or to produce any document or any other thing which, in the opinion of the Reserve Bank, may be useful for, or relevant to, the subject matter of the inquiry.

25 (4) No complaint shall be filed against any banking company in any court of law in respect of any contravention or default in respect of which any penalty has been imposed by the Reserve Bank under this section.

30 (5) Any penalty imposed by the Reserve Bank under this section shall be payable within a period of fourteen days from the date on which notice issued by the Reserve Bank demanding payment of the sum is served on the banking company and in the event of failure of the banking company to pay the sum within such period, may be levied on a direction made by the principal civil court having jurisdiction in the area where the registered office of the banking company is situated; or, in the case of a banking company incorporated outside India, where its principal place of business in India is situated:

35 Provided that no such direction shall be made except on an application made to the court by the Reserve Bank or any officer authorised by that Bank in this behalf.

(6) The court which makes a direction under sub-section (5) shall issue a certificate specifying the sum payable by the banking company and every such certificate shall be enforceable in the same manner as if it were a decree made by the court in a civil suit.

5

(7) Where any complaint has been filed against any banking company in any court in respect of the contravention or default of the nature referred to in sub-section (3) or, as the case may be, sub-section (4) of section 46, then, no proceedings for the imposition of any penalty on the banking company shall be taken under this section.

Amend-
ment of
section
51.

18. In section 51 of the principal Act,—

(a) in clause (c) of the proviso, after the words and figures "in section 46", the words, figures and letter "or in section 47A" shall be inserted;

15

(b) the *Explanation* shall be omitted.

Amend-
ment of
section
52.

19. In section 52 of the principal Act, in the proviso to sub-section (3), after the words "this section", the brackets, words, figures and letters "(including the rules made for the first time on matters specified in sections 10A and 47A)" shall be inserted.

20

Insertion
of new
section
after sec-
tion 55.

20. After section 55 of the principal Act, the following section shall be inserted, namely:—

Power to
remove
difficulties.

"55A. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, as occasion requires, do anything (not inconsistent with the provisions of this Act) which appears to it to be necessary for the purpose of removing the difficulty."

25

Provided that no such power shall be exercised after the expiry of a period of three years from the commencement of section 20 of the Banking Laws (Amendment) Act, 1967.

30

21. In Part V, in the provisions of the principal Act, as applied to or in relation to co-operative societies,— Amend-
ment of
Part V.

(a) in section 5A, as substituted by clause (d) of section 56 of the principal Act,—

5 (i) in sub-section (1), for the words "this Part", the words "this Act" shall be substituted;

(ii) in sub-section (2), for the words "this Part", the words "this Act" shall be substituted;

10 (b) in section 7, as substituted by clause (f) of the said section 56, in sub-section (2), after clause (b), the following clause shall be inserted, namely:—

15 "(c) any co-operative society, not being a primary credit society, formed by the employees of a banking company or the State Bank of India or any other banking institution notified by the Central Government under section 51 or the employees of a subsidiary of such banking company or the State Bank of India or, as the case may be, such banking institution.";

20 (c) in clause (g) of the said section 56, for the word and figures "section 10", the words, figures and letters "sections 10, 10A, 10B, 10C and 10D" shall be substituted;

(d) in section 18 of the principal Act, as substituted by clause (j) of the said section 56, in the *Explanation*, for clause (c), the following clause shall be substituted, namely:—

25 "(c) in the case of a State or central co-operative bank, also any deposit of money with it representing the reserve fund or any part thereof required to be maintained with it by any other co-operative society within its area of operation, and in the case of a central co-operative bank, also an advance taken by it from the State co-operative bank of the State concerned;";

30 (e) for clause (l) of the said section 56, the following clause shall be substituted, namely:—

35 "(l) for section 20 of the principal Act, the following section shall be substituted, namely:—

20. (l) No co-operative bank shall—

(a) make any loans or advances on the security of its own shares; or

Restrictions on loans and advances.

(b) grant unsecured loans or advances—

(i) to any of its directors; or

(ii) to firms or private companies in which any of its directors is interested as partner or managing agent or guarantor or to individuals 5 in cases where any of its directors is a guarantor; or

(iii) to any company in which the chairman of the Board of directors of the co-operative bank (where the appointment of a chairman is for a fixed term) is interested as its managing agent, or where there is no managing agent, as its chairman or managing director:

Provided that nothing in clause (b) shall apply to the grant of unsecured loans or advances— 15

(a) made by a co-operative bank—

(i) against bills for supplies or services made or rendered to Government or bills of exchange arising out of *bona fide* commercial or trade transactions, or 20

(ii) in respect whereof trust-receipts are furnished to the co-operative bank;

(b) made by a primary co-operative bank to any of its directors or to any other person within such limits and on such terms and con- 25 ditions as may be approved by the Reserve Bank in this behalf.

(2) Every co-operative bank shall, before the close of the month succeeding that to which the return relates, submit to the Reserve Bank a return in the 30 prescribed form and manner showing all unsecured loans and advances granted by it to companies in cases [other than those in which the co-operative bank is prohibited under sub-section (1) to make unsecured loans and advances] in which any of its directors is interested 35 as director or managing agent or guarantor.

(3) If, on examination of any return submitted under sub-section (2), it appears to the Reserve Bank

5

that any loans or advances referred to in that sub-section are being granted to the detriment of the interests of the depositors of the co-operative bank, the Reserve Bank may, by order in writing, prohibit the co-operative bank from granting any such further loans or advances or impose such restrictions on the grant thereof as it thinks fit, and may by like order direct the co-operative bank to secure the re-payment of such loan or advance within such time as may be specified in the order.”;

10

(f) in sub-section (2) of section 22, as substituted by clause (o) of the said section 56, for the proviso, the following proviso shall be substituted, namely:—

15

“Provided that nothing in clause (b) of sub-section (1) shall be deemed to prohibit—

20

(i) a co-operative society carrying on business as a co-operative bank at the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965, or

25

(ii) a co-operative bank which has come into existence as a result of the division of any other co-operative society, or the amalgamation of other co-operative societies carrying on business in either case as a co-operative bank or banks at such commencement, or

30

(iii) a primary credit society which becomes a primary co-operative bank after such commencement, from carrying on banking business until it is granted a licence in pursuance of this section or is, by a notice in writing, notified by the Reserve Bank that the licence cannot be granted to it.”;

35

(g) in sub-section (1) of section 23, as substituted by clause (p) of the said section 56, in clause (b) of the proviso, for the words “opening of branches”, the words “opening or changing the location of branches” shall be substituted;

40

(h) in sub-section (2A) of section 24, as substituted by clause (q) of the said section 56, for clause (b), the following clause shall be substituted, namely:—

45

“(b) In computing the amount for the purpose of clause (a),—

50

(i) any cash or balances maintained in India by a co-operative bank, other than a scheduled State co-operative bank, with itself or in current account with the

23 of 1965.

Reserve Bank or the State Bank of India or with any other bank which may be notified in this behalf by the Central Government and also any balances maintained with the State co-operative bank of the State concerned, and, in the case of a primary co-operative bank, also any balances maintained with the central co-operative bank of the district concerned or with the State co-operative bank of the State concerned in excess of the aggregate of the cash or balances or both required to be maintained under section 18; and 10

(ii) any balance maintained by a scheduled State co-operative bank with the Reserve Bank in excess of the balance required to be maintained by it under section 42 of the Reserve Bank of India Act, 1934, and any balances in current account maintained in India by 15 a scheduled State co-operative bank with the State Bank of India or with any other bank which may be notified by the Central Government,

2 of 1934.

shall be deemed to be cash maintained in India.

Explanation.—For the purposes of this sub-section,— 20

(a) approved securities, or a portion thereof, representing investment of Agricultural Credit Stabilization Fund of a co-operative bank shall not be deemed to be unencumbered approved securities;

(b) balance with the State co-operative bank of the 25 State concerned or with the central co-operative bank of the district concerned, or a portion thereof, representing investment of Agricultural Credit Stabilization Fund of a co-operative bank shall not be deemed to be cash maintained in India; 30

(c) in case a co-operative bank has taken an advance against any balance maintained with the State Bank of India or with any other bank which may be notified in this behalf by the Central Government or with the State co-operative bank of the State concerned or with the central co-operative bank of the district concerned, such balance to the extent to which it has been drawn against or availed of shall not be deemed to be cash maintained in India.”;

35

(i) in the proviso to sub-section (1) of section 35, as inserted by clause (w) of the said section 56, the following shall be added at the end, namely:—

5 "and may, if it considers it necessary and expedient so to do, supply a copy of the said report to the State co-operative bank or the Registrar of co-operative societies of the State in which the inspected bank is registered";

10 (j) in clause (zb) of the said section 56, after the word, figures and letter "Part IIA", the word, figures and letter, "Part IIC," shall be inserted.".

22. After the Fourth Schedule to the principal Act, the following Schedule shall be inserted, namely:—

Insertion
of new
Schedule

THE FIFTH SCHEDULE

(See section 36AG)

PRINCIPLES OF COMPENSATION

15 1. The compensation to be given under section 36AG shall be an amount equal to the value of the assets of the acquired bank as on the day immediately before the appointed day, computed in accordance with the provisions of Part I of this Schedule less the total 20 amount of liabilities thereof computed in accordance with the provisions of Part II of this Schedule.

Part I.—Assets

For the purposes of this Part "assets" means the total of the following:—

25 (a) the amount of cash in hand and with the Reserve Bank and the State Bank of India (including foreign currency notes which shall be converted at the market rate of exchange);

30 (b) the amount of balances with any bank, whether on deposit or current account, and money at call and short notice, balances held outside India being converted at the market rate of exchange;

Provided that any balances which are not realisable in full shall be deemed to be debts and valued accordingly;

35 (c) the market value, as on the day immediately before the appointed day, of any securities, shares, debentures, bonds and other investments, held by the bank concerned.

Explanation.—For the purposes of this clause,—

(i) securities of the Central and State Governments [other than the securities specified in sub-clauses (ii) and

(iii) of this *Explanation*] maturing for redemption within five years from the appointed day shall be valued at the face value or the market value, whichever is higher;

(ii) securities of the Central Government, such as Post Office Certificates and Treasury Savings Deposit Certificates and any other securities or certificates issued or to be issued under the Small Savings Scheme of the Central Government, shall be valued at their face value or the encashable value, as on the day immediately before the appointed day,
10 whichever is higher;

(iii) where the market value of any Government security such as the zamindari abolition bonds or other similar security in respect of which the principal is payable in instalments, is not ascertainable or is, for any reason, not considered as reflecting the fair value thereof or as otherwise appropriate, the security shall be valued at such an amount as is considered reasonable having regard to the instalments of principal and interest remaining to be paid, the period during which such instalments are payable, the yield of any security, issued by the Government to which the
20 security pertains and having the same or approximately the same maturity, and other relevant factors;
15

(iv) where the market value of any security, share, debenture, bond or other investment is not considered reasonable by reason of its having been affected by abnormal factors, the investment may be valued on the basis of its
25 average market value over any reasonable period;

(v) where the market value of any security, share, debenture, bond or other investment is not ascertainable, only such value, if any, shall be taken into account as is considered reasonable having regard to the financial position
30 of the issuing concern, the dividend paid by it during the preceding five years and other relevant factors;

(d) the amount of advances (including loans, cash credits, overdrafts, bills purchased and discounted), and other debts,
35 whether secured or unsecured, to the extent to which they are reasonably considered recoverable, having regard to the value of the security, if any, the operations on the account, the reported worth and respectability of the borrower, the prospects of realisation and other relevant considerations;
40

(e) the value of any land or buildings;

- (f) the total amount of the premia paid, in respect of all leasehold properties, reduced in the case of each such premium by an amount which bears to such premium the same proportion as the expired term of the lease in respect of which such premium shall have been paid bears to the total term of the lease;
- (g) the written down value as per books, or the realisable value, as may be considered reasonable, of all furniture, fixtures and fittings;
- (h) the market or realisable value, as may be appropriate, of other assets appearing on the books of the bank, no value being allowed for capitalised expenses, such as share selling commission, organisational expenses and brokerage, losses incurred and similar other items.

15

Part II.—Liabilities

For the purposes of this Part "liabilities" means the total amount of all outside liabilities existing on the appointed day, and all contingent liabilities which the Central Government or the transferee bank may reasonably be expected to be required to meet out of its own resources on or after the appointed day.

2. If the acquired bank is not incorporated in India, the assets or, as the case may be, the liabilities of the bank shall be, for the purposes of Part I and Part II, and subject to the other provisions therein, the assets and liabilities of the offices of the bank situated in India.

COMPENSATION PAYABLE TO SHAREHOLDERS

3. Every shareholder of the acquired bank shall be given such amount as compensation as bears to the total compensation, calculated in accordance with the provisions of paragraph 1, the same proportion as the amount of paid-up capital of the shares held by the shareholder bears to the total paid-up capital of the acquired bank.

CERTAIN DIVIDENDS NOT TO BE TAKEN INTO ACCOUNT

4. No separate compensation shall be payable for any profits or any dividend in respect of any period immediately preceding the appointed day for which, in the ordinary course, profits would have been transferred or dividend declared after the appointed day.

CHAPTER III

AMENDMENTS TO THE RESERVE BANK OF INDIA ACT, 1934

Amend-
ment of
section 2.

23. In the Reserve Bank of India Act, 1934 (hereinafter in this Chapter referred to as the principal Act), in section 2,—

2 of 1934.

(a) to clause (cii), the following proviso shall be added, 5
namely:—

“Provided that this sub-clause shall not apply to the admission of a co-operative bank as a member by reason of such co-operative bank subscribing to the share capital of such co-operative society out of funds provided by the State Government for 10 the purpose.”;

(b) to clause (ciii), the following proviso shall be added,
namely:—

“Provided that this sub-clause shall not apply to the admission of a co-operative bank as a member by reason of such co-operative bank subscribing to the share capital of such co-operative society out of funds provided by the State Government 15 for the purpose.”;

(c) to clause (civ), the following proviso shall be added,
namely:—

20

“Provided that this sub-clause shall not apply to the admission of a co-operative bank as a member by reason of such co-operative bank subscribing to the share capital of such co-operative society out of funds provided by the State Government for the purpose.”.

25

Amend-
ment of
section 17.

24. In section 17 of the principal Act, in the proviso to clause (3A),—

(a) for sub-clause (b) of clause (i), the following sub-clause shall be substituted, namely:—

“(b) maturing not later than one hundred and eighty 30 days from the date of the loan or advance, and

it will, so long as any part of such loans and advances remains unpaid, continue to hold such bills of exchange of a value not less than the amount of such loans or advances outstanding for the time being; or”;

35

(b) for clause (ii), the following clause shall be substituted, namely:—

“(ii) it has granted a pre-shipment loan or advance to an exporter or any other person in India in order to enable him to export goods from India, the amount of the loan or advance drawn and outstanding at any time being not less than the outstanding amount of the loan or advance obtained by the borrowing bank from the Bank.”.

25. For section 24 of the principal Act, the following section shall 10 be substituted, namely:—

Amend-
ment
of sec-
tion 24.

“24. (1) Subject to the provisions of sub-section (2), bank notes shall be of the denominational values of two rupees, five rupees, ten rupees, twenty rupees, fifty rupees, one hundred rupees, five hundred rupees, one thousand rupees, five thousand rupees and ten thousand rupees or of such other denominational values, not exceeding ten thousand rupees, as the Central Government may, on the recommendation of the Central Board, specify in this behalf.

Denomi-
nations
of notes.

(2) The Central Government may, on the recommendation of the Central Board, direct the non-issue or the discontinuance 20 of issue of bank notes of such denominational values as it may specify in this behalf.”.

26. In section 33 of the principal Act, in sub-section (4), for the figures and word “2.88 grains”, the figures and word “0.118489 25 grammes”, and for the words “at the market rate”, the words “at rates not exceeding the market rates” shall be substituted.

Amend-
ment of
section 33.

27. In section 45I of the principal Act, to clause (c), the following *Explanation* shall be added, namely:—

Amend-
ment of
section
45I.

“*Explanation.*—For the removal of doubts, it is hereby declared that a company registered under section 3 of the Insurance Act, 1938, for any class of insurance business and a company, not being a banking company, a corporation or a firm, carrying on, as its principal business, the management, conduct or supervision, as the foreman or agent, of any transaction or arrangement by which it enters into an agreement with a number of subscribers that every one of them shall subscribe a certain sum by instalments for a definite period and that each subscriber in his turn, as determined by lot or by auction or by tender or in such other manner as provided in the agreement, shall be entitled to a prize amount shall be deemed to be, a financial institution as defined in this clause.”.

Insertion
of
new sec-
tion 54AA.

Power of
Bank to
depute its
employees
to other
Institu-
tions.

28. After section 54A of the principal Act, the following section shall be inserted, namely:—

54AA. (1) The Bank may, notwithstanding anything contained in any law for the time being in force or in any contract, depute any member of its staff for such period as it may think fit to any institution which is either wholly or substantially owned by the Bank, and thereupon the person so deputed shall, during the period of his deputation, render such service to the institution as that institution may require.

(2) Where a person has been deputed to an institution under 10 sub-section (1), he shall not be entitled to claim any salary, emoluments and other terms and conditions of service which he would not have been entitled to claim if he had not been so deputed.

(3) Nothing contained in this section shall empower the 15 Bank to depute any member of its staff to any institution on any salary, emoluments or other terms and conditions which is or are less favourable to him than that or those to which he is entitled immediately before such deputation.

(4) For the purposes of this section, an institution shall be 20 deemed to be substantially owned by the Bank if in the capital of the institution the Bank has not less than forty per cent. share.

Explanation.—The word “capital” means, in relation to the Unit Trust, the initial capital of that Trust.’

CHAPTER IV

AMENDMENTS TO THE STATE BANK OF INDIA ACT, 1955

Amend-
ment of
section
33.

29. In the State Bank of India Act, 1955 (hereinafter in this Chapter referred to as the principal Act), in section 33,—

23 of 1955.

(a) in sub-clause (f) of clause (i), for the words “goods which are hypothecated”, the words “goods or other assets which are hypothecated or assigned” shall be substituted;

(b) in clause (xviii), for the words “six months”, the words “twelve months” shall be substituted;

(c) in clause (xixb),—

(i) for the words “the advancing or lending of money to”, the words “the advancing or lending of money to, or discounting or purchase of any negotiable instrument on behalf of,” shall be substituted;

(ii) for the words “in excess of six months”, the words “in excess of twelve months” shall be substituted;

40

(d) in clause (xi(c)), for the words "six months", the words "twelve months" shall be substituted.

30. In section 34 of the principal Act,—

Amend-
ment of
section 34.

(a) in clause (a) of sub-section (1), for the words "six months", the words "twelve months" shall be substituted;

(b) in sub-section (3), for sub-clause (ii) of clause (b), the following sub-clause shall be substituted, namely:—

(i.) save as otherwise provided in this Act, twelve months from the date aforesaid if the instrument or security is drawn or issued for any other purpose.".

STATEMENT OF OBJECTS AND REASONS

A good deal of concern has been expressed in the recent past about the functioning of the commercial banks in the country in the context of our economic growth and planned development. The resources of the banking system need to be distributed equitably and purposefully in conformity with the developmental requirements so that priority sectors receive their due share and particular clients or groups of clients are not favoured in the matter of distribution of credit. A number of steps, both administrative and legislative, are proposed to be taken to secure this objective by extending effective social control over banks. The main object of the Bill is to amend the Banking Regulation Act to incorporate certain new provisions towards achieving this purpose.

2. The more important new provisions of the Bill connected with the management of the banks relate to the reconstitution of their Boards of directors and appointment of full-time chairmen. Every banking company will have to reconstitute its Board of directors so that the majority of persons on the board have special knowledge or practical experience in agriculture, rural economy, small-scale industries, co-operation, banking, finance and other matters which are useful to a banking company and should not have substantial interest or active association with large or medium-sized industrial or business undertakings. The chairman of each bank will be required to be a professional banker and a full-time chief executive officer. It will be open to the Reserve Bank to reconstitute the Board of directors or to appoint a new chairman if it proves to be necessary. There will be a statutory prohibition on the grant of any type of loans and advances to directors and the concerns in which they are interested. The scope of the Reserve Bank's power to issue directions to a banking company is also proposed to be widened to cover matters having a bearing on monetary stability, sound economic growth and the equitable allocation and efficient use of its resources. Power is also proposed to be taken by the Central Government for the acquisition of the business of a banking company if it becomes a persistent defaulter in complying with the requirements of the law or directions issued thereunder.

3. Opportunity is also being taken to introduce certain minor and consequential amendments to the Banking Regulation Act, 1949, the Reserve Bank of India Act, 1934, and the State Bank of India Act, 1955. The details of these amendments have been explained in the notes for clauses.

New Delhi;

MORARJI DESAI.

The 18th December, 1967.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF
THE CONSTITUTION OF INDIA

[Copy of letter No. F.4(43)-BC/67, dated the 18th December, 1967 from Shri Morarji Desai, Deputy Prime Minister and Minister of Finance to the Secretary, Lok Sabha]

The President having been informed of the subject matter of the proposed Banking Laws (Amendment) Bill, 1967, recommends the introduction of the Bill in the Lok Sabha under clause (1) of article 117 and its consideration under clause (3) of article 117 of the Constitution.

FINANCIAL MEMORANDUM

Under the Banking Laws (Amendment) Bill, 1967 powers are sought to be taken by the Central Government for the acquisition of a banking company under certain contingencies. The new provisions relating to the acquisition of business and other connected matters are contained in the proposed new sections 36AE, 36AF, 36AG, 36AH, 36AI and 36AJ, which are included in a new Part IIC sought to be inserted by clause 15.

The proposed new section 36AE empowers the Central Government to acquire an undertaking if it is satisfied, upon receipt of a report from the Reserve Bank, that a banking company has been persistently defaulting in complying with any directions given to it under sections 21, 35 or 35A of the Banking Regulation Act and that the acquisition of that bank is considered necessary in the interests of the depositors of the banking company or in the interest of banking policy or for the better provision of credit generally or to any particular sector. The compensation payable in the event of any such acquisition will be determined in accordance with the provisions of the proposed new section 36AG, read with the Fifth Schedule. The proposed new section 36AH provides for the constitution of a tribunal in case the compensation initially determined in accordance with the principles laid down in the Fifth Schedule are not acceptable to one-fourth or more of the number of share-holders holding one-fourth or more of the paid-up capital in the acquired bank.

The operative provisions of the legislation are permissive and not mandatory. It is not possible to indicate at this stage the recurring and non-recurring expenditure arising out of the financial provisions contained in the Bill. According to tentative estimates based on available information regarding existing banks in the private sector, the total amount of compensation, in accordance with the principles set out in the Fifth Schedule in the event of all these banks being taken over will be approximately Rs. 100 crores. As regards the expenditure on the setting up of a tribunal, this is likely to be incurred only if such a tribunal is set up in the event of the specified percentage of shareholders of the acquired bank not accepting the compensation. If the tribunal is set up in respect of a particular acquired bank and is able to finish the work within about six months.

the non-recurring expenditure may not be in excess of rupees one lakh and fifty thousand and no recurring expenditure will be involved.

It is not possible at this stage to indicate whether and when any bank will be taken over under the provisions of the Bill. It will be necessary to watch, after the Bill has been passed into law, how far the banks are working in accordance with the directions issued thereunder and it will also be necessary to give to any individual bank adequate opportunity to show cause before it is taken over. It is, therefore, unlikely that any bank will be taken over in the current financial year or during the year 1968-69 and no recurring and non-recurring expenditure on this account is, therefore, anticipated during the current financial year or during 1968-69. The provisions which will have to be made in any of the financial year 1969-70 onwards cannot also be settled or anticipated at this stage

Notes on clauses

Clause 2 seeks to insert definitions of certain new expressions in the various clauses amending the Act. The proposed definitions are self-explanatory.

Clause 3 seeks to insert four new sections, namely, 10A, 10B, 10C and 10D.

The proposed new section 10A provides for the reconstitution of the Boards of directors of commercial banks. Every commercial bank will have to so reconstitute its Board of directors that the majority of persons on the Boards have special knowledge or practical experience in agriculture, rural economy, co-operation, small-scale industries, banking, finance, law and such other matters as may be useful to the banking company and do not have substantial interest or active association with any large or medium-sized industrial or business undertakings. Of these persons, not less than two directors will represent agriculture and rural economy, co-operation and small-scale industries. If the composition of the Board of directors of any banking company does not conform to the statutory requirements, the Board will have to be reconstituted, and the persons who are to retire in order to fulfil the requirements of the proposed section shall be determined by lot. If the Board has not been properly reconstituted, the Reserve Bank will have the power to reconstitute it and to remove or appoint directors who fulfil the specified requirements.

The proposed new section 10B provides for the appointment of a whole-time chairman for each banking company who will have special knowledge and practical experience of the working of commercial bank or financial, economic or business administration. The chairman will be the chief executive officer of the bank and will not be substantially interested in any other company or firm or otherwise actively connected with it. He will be appointed for a period not exceeding five years at a time. The appointment, removal or termination of appointment of the chairman and the terms to be granted to him will require the approval of the Reserve Bank (*vide note on clause 11*).

The proposed new section 10C provides that any director or chairman appointed by the Reserve Bank will not be required to hold qualification shares in the banking company.

The proposed new section 10D provides that the appointment or removal of a director or a chairman in pursuance of the aforesaid clauses shall have effect notwithstanding anything contained in any other law or contract for the time being in force.

Clause 4 seeks to amend the existing section 16 so as to remove the prohibition of common directorship in more than one banking company in respect of a director appointed by the Reserve Bank. Common directorship in the case of a Reserve Bank's director would not have the same implications as for other directors on Boards of more than one commercial bank and the removal of the restriction would enable the Reserve Bank to get over any administrative difficulties of securing suitable persons on the Boards of all commercial banks.

Clause 5 seeks to substitute a new section for the existing section 20. At present, the grant of unsecured loans and advances to directors and to their concerns in some circumstances is prohibited. It is now proposed to prohibit the grant of any loans in future, whether the loan is secured or unsecured, and to give or renew any guarantee to any of its directors or to any company or firm in which they are substantially interested or to any company, firm or individual with which or with whom they are otherwise closely connected. All existing loans will have to be recovered on the expiry of periods specified in the existing loan contracts, or where no periods are specified, within three years of the date on which this provision is brought into force.

Clauses 6 and 7 seek to make minor clarificatory amendments to the existing sections 21 and 24 respectively.

Clause 8 seeks to amend the existing section 30 and provides that the appointment, re-appointment or removal of the auditors of a banking company will require the approval of the Reserve Bank. The Reserve Bank will also be enabled to give to the auditors such special directions, if any, as may be considered necessary.

Clause 9 seeks to make an amendment of a drafting nature.

Clause 10 seeks to amend section 35A of the Act to amplify the Reserve Bank's powers to issue directions in the interest of banking policy as now proposed to be defined (*vide clause 2*).

Clause 11 seeks to amend section 35B of the Act and provides that the appointment, removal and termination of appointment of the

chairmen of banking companies should be made in future with the approval of the Reserve Bank (*vide note on clause 3*).

Clause 12 seeks to amend section 36 of the Act and enables the Reserve Bank to depute an observer and to exercise certain other powers in the case of any banking company at any time, whether or not an inspection of the bank has been undertaken.

Clause 13 seeks to provide for amendments to section 36AA which are of a consequential nature.

Clause 14 seeks to amend section 36AB to enable the Reserve Bank to appoint directors in the interest of the banking policy or in the public interest. At present it is permissible for the Reserve Bank to appoint a director only in the interest of a banking company or its depositors.

Clause 15 seeks to insert two new Parts, namely, Part IIB and Part IIC to the Banking Regulation Act.

Part IIB seeks to insert a new section, namely, 36AD. It is proposed to prohibit the obstruction of business at any office of a bank, and demonstration in or near the premises of its offices to ensure that no inconvenience is caused to the members of the public and no harm is done to the credit-worthiness of a banking company.

Part IIC relates to the acquisition of the undertaking of a banking company in certain cases. This part seeks to insert the following sections, namely, 36AE, 36AF, 36AG, 36AH, 36AI and 36AJ.

The proposed new section 36AE gives powers to the Central Government to take over the business of any banking company if it has persistently failed to comply with the directions given by the Reserve Bank and if it is considered that in the interests of depositors or in the interest of banking policy or for the better provision of credit in general or to particular sectors, it is necessary to acquire the banking company.

The proposed new section 36AF empowers the Central Government to make a scheme, after acquiring any particular bank, for carrying on the business of a bank either directly or by transferring it to some other company or corporation. The provision details the different methods which may be provided in the scheme for the effectual transfer of the undertaking.

The proposed new section 36AG provides that the compensation payable to shareholders will be in accordance with the principles laid down in the Fifth Schedule (*vide* clause 22). In case the compensation as initially determined in accordance with the Schedule is not acceptable to one-fourth or more of the number of shareholders holding one-fourth or more of the paid-up capital in the acquired bank, a Tribunal may be set up by the Central Government to consider and decide the actual amount of compensation in accordance with the principles set out in the Schedule.

The proposed new section 36AH provides for the constitution of the Tribunal.

The proposed new section 36AI provides for the conferment of the powers of a civil court on the Tribunal.

The proposed new section 36AJ provides for the regulation of the procedure of the Tribunal.

Clause 16 seeks to amend the existing section 39 and seeks to provide for a minor clarificatory amendment.

Clause 17 seeks to insert a new section 47A empowering the Reserve Bank to levy penalty in the case of any bank on its own initiative after a suitable enquiry.

Clauses 18 and 19 seek to make minor consequential amendments.

Clause 20 seeks to insert a new section 55A to provide for the removal of difficulties, if any, in giving effect to the provisions of the Act.

Clause 21 seeks to amend the existing section 56 which provides for the amendment of the various provisions of the Act to the extent they are applicable to the co-operative banks. The incorporation, regulation and winding up of co-operative banks is governed by the respective State laws and the various new provisions of the Bill such as the requirements in regard to the composition of the Board of directors, appointment of whole-time chairmen, directors and observers by the Reserve Bank, approval of the appointment and removal of auditors by the Reserve Bank and acquisition of the banking companies, if necessary, are not, therefore, being made applicable to the co-operative banks. Certain other minor amendments, including clarificatory explanations have been proposed to the existing provisions.

Clause 22 seeks to insert a new Schedule to the Act setting out the principles on which compensation is to be determined on the basis of the market value of the assets minus the outside liabilities.

Clause 23 seeks to clarify a few definitions in the Reserve Bank of India Act.

Clause 24 seeks to amend section 17 of the Reserve Bank of India Act and to lay down a simplified procedure for the refinancing of pre-shipment loans and advances to exporters.

Clause 25 seeks to substitute the existing section 24 and provides for the issue of bank notes in denominations other than those which are specified in the Reserve Bank of India Act.

Clause 26 seeks to amend section 33 of the Reserve Bank of India Act to provide for the revaluation of gold held in the Issue Department at the current parity rate, following the devaluation of the rupee and for the valuation of the securities held in the Issue Department at less than the market rates.

Clause 27 seeks to clarify the connotation of a "financial institution" to make it clear that insurance and chit fund companies fall within the ambit of financial institutions.

Clause 28 seeks to insert a new section 54AA in the Reserve Bank of India Act to provide for the transfer of officers and employees of the Reserve Bank to other institutions wholly owned or substantially owned by the Reserve Bank.

Clauses 29 and 30 seek to provide for amendments to the State Bank of India Act to enable that Bank to grant loans and advances for periods not exceeding twelve months at a time as against six months as at present.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill seeks to insert, *inter alia*, a new section, namely section 10A, in the Banking Regulation Act, 1949. The proposed new section provides that the majority of the members of the Board of directors of a banking company shall have such professional and other qualifications as are specified therein. The proposed section further provides that if the composition of the Board of directors of an existing banking company is such that it does not fulfil the requirements of that section, such Board shall be re-constituted within a period of three months from the commencement of the Banking Laws (Amendment) Act, 1967, and if for the purpose of such re-constitution it is necessary to retire any director, the banking company shall determine, by lots drawn in the prescribed manner, which director should retire.

The clause further provides that if the Reserve Bank is of opinion that the composition of the Board of directors of a banking company is such that it does not fulfil the requirements of the proposed new section 10A, it may direct the banking company to re-constitute its Board of directors and in case the banking company fails to comply with such directions within a period of two months, the Reserve Bank may reconstitute the Board after determining, by lots drawn in the prescribed manner, the person who should retire from the Board of directors.

Since the manner in which the lots should be drawn is a matter of detail, the proposed clause provides for the specification of such details by rules. The delegation of the legislative power is, therefore, of a normal character.

2. Clause 15 of the Bill seeks to insert, *inter alia*, a new Part, namely Part II-C (containing new sections 36AE to 36AJ) in the Banking Regulation Act, 1949. The proposed Part II-C provides for the acquisition of the undertakings of banking companies in certain cases and for the transfer of the undertaking of the acquired bank to any corporation or company, referred to in the Bill as the transferee bank. Clause 36AF empowers the Central Government to make a scheme for carrying out the purposes of such acquisition, and transfer, if necessary, to a corporation or company. The scheme may provide for the transfer of the undertaking to a company or corporation,

the constitution of the first Board of management of the transferee bank, the manner of payment of compensation to the shareholders of the acquired bank, the continuance of the services of the employees of the acquired bank, etc.

The clause further provides that copies of every scheme made under the Bill shall be laid before both Houses of Parliament. The matters which are to be provided in the scheme are matters of detail. The delegation of the legislative power is, therefore, of a normal character.

3. Clause 17 of the Bill seeks to insert a new section, namely section 47A, in the Banking Regulation Act, 1949, which empowers the Reserve Bank to impose penalties. The proposed new section empowers the Reserve Bank to adjudge the penalty after holding an inquiry in the prescribed manner. The manner of inquiry for adjudging the penalty is a matter of detail. The delegation of the legislative power is, therefore, of a normal character.

BILL NO. 176 OF 1967

A Bill to make provision for civil defence and for matters connected therewith.

Be it enacted by Parliament in the Eighteenth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

to actual combat, for affording protection to any person, property, place or thing in India or any part of the territory thereof against any hostile attack, whether from air, land, sea or other places, or, for depriving any such attack of the whole or part of its effect, whether such measures are taken before, during, at or after the time of such attack;

(b) "Civil Defence Corps" means the Corps formed wholly or mainly to meet the needs of civil defence and includes an organisation deemed to be a Corps under the proviso to sub-section (1) of section 4;

(c) "hostile attack" means any attack by any person or body of persons, whether during any war, external aggression, internal disturbance or otherwise which endangers the security of any life, property, place or thing in India or any part of the territory thereof;

(d) "notification" means a notification published in the Official Gazette;

(e) "personal service injury" has the meaning assigned to it in the Personal Injuries (Emergency Provisions) Act, 1962;

59 of 1962.

(f) "State Government", in relation to a Union territory, means the Administrator of the Union territory.

CHAPTER II

POWER OF CENTRAL GOVERNMENT TO MAKE RULES FOR CIVIL DEFENCE

Power to make rules for civil defence.

3. (1) The Central Government may, for securing civil defence, by notification, make rules providing for all or any of the following matters, namely:—

(a) preventing the prosecution of any work likely to prejudice civil defence;

(b) instruction of members of the public regarding civil defence and their equipment for the purposes of such defence;

(c) provision, storage and maintenance of commodities and things required for civil defence;

(d) prohibiting or regulating traffic, and the use of vessels, buoys, lights and signals in parts and territorial, tidal and inland waters;

(e) control of lights and sounds;

(f) protection of life and property by taking fire prevention and other measures;

35

- (g) securing of any building, premises or other structures from being readily recognisable in the event of a hostile attack;
- (h) for the prevention of danger to life or property, the demolition, destruction or rendering useless, of any building, premises or other structures or any other property;
- 5 (i) prohibiting or regulating the possession, use or disposal of—
- 10 (i) explosives, inflammable substances, corrosive and other dangerous substances or articles, arms and ammunition;
- (ii) vessels;
- (iii) wireless telegraphic apparatus;
- (iv) aircraft; and
- 15 (v) photographic and signalling apparatus and any means of recording information;
- (j) evacuation of areas and the removal of property or animals therefrom;
- 20 (k) accommodation in any area of persons evacuated from another area and the regulation of the conduct of evacuated persons accommodated in such area;
- (l) billeting of evacuated person or persons authorised to perform functions under this Act;
- 25 (m) salvage of damaged buildings, structures and property and disposal of the dead;
- (n) seizure and custody or destruction of injured, unclaimed or dangerous animals;
- (o) ensuring the safety of—
- 30 (i) ports, dockyards, lighthouses, lightships, aerodromes and facilities associated with aerial navigation;
- (ii) railways, tramways, roads, bridges, canals and all other means of transport by land or water;
- 35 (iii) telegraphs, post offices, signalling apparatus and all other means of communication;
- (iv) sources and systems of water supply, works for the supply of water, gas or electricity and all other works for public purposes;

(v) vessels, aircraft, transport vehicles as defined in the Motor Vehicles Act, 1939, and rolling stocks of railways and tramways;

(vi) warehouses and all other places used or intended to be used for storage purposes;

(vii) mines, oilfields, factories or industrial or commercial undertakings generally, or any mine, oilfield, factory or industrial or commercial undertaking in particular;

(viii) laboratories and institutions where scientific or technological research or training is conducted or imparted; ¹⁰

(ix) all works and structures being part of, or connected with, anything earlier mentioned in this clause; and

(x) any other place or thing used or intended to be used for the purposes of Government or a local authority or a semi-Government or autonomous organisation, the protection of which is considered necessary or expedient for securing civil defence; ¹⁵

(p) control of any road or pathway, waterway, ferry or bridge, river, canal or other source of water supply;

(q) precautionary measures which the Government or any department thereof or any local authority, members of police force, fire brigade and members of any other service or authority employed primarily for purposes other than civil defence purposes should be required to take within their respective jurisdictions or with respect to any personnel employed by them; ²⁰ ²⁵

(r) preventing or controlling any use of uniforms, whether official or otherwise, or flags or official decorations like medals, badges or other insignia or anything similar thereto, the wearing of which is calculated to deceive or to prejudice civil defence; ³⁰

(s) precautions to be taken or action to be taken by persons or authorities with a view to protecting or acquainting the general public or any members thereof against the dangers involved in any apprehended hostile attack; ³⁵

(t) requiring the owner or occupier of any building, structure or premises to make or carry out such arrangements as may be necessary for the purposes of detection and prevention of fire;

- (u) taking of specified measures for dealing with outbreaks of fire;
- (v) directing that, subject to any specified exemption, no person present in any specified area shall, between such hours as may be specified, be out of doors except under the authority of a written permit granted by a specified authority or person;
- (w) (i) prohibiting the printing and publication of any newspaper, news-sheet, book or other document containing matters prejudicial to civil defence;
- (ii) demanding security from any press used for the purpose of printing or publishing, and forfeiting the copies of any newspaper, news-sheet, book or other document containing any of the matters referred to in sub-clause (i);
- (x) regulating the conduct of persons in respect of areas the control of which is considered necessary or expedient, and removal of persons from such areas;
- (y) requiring any person or class of persons to comply with any scheme of civil defence;
- (z) any other provision which may be necessary for the purposes of civil defence.
- (2) Any rule made under sub-section (1) may provide that orders with regard to the matters specified therein may be made by the State Government.
- (3) Any rule made under sub-section (1) may provide that a contravention thereof or any order made thereunder shall be punishable with fine which may extend to five hundred rupees, and where the contravention is a continuing one, with a further fine which may extend to fifty rupees for every day, after the first, during which such contravention continues.

4. (1) The State Government may constitute, for any area within the State, a body of persons to be called the Civil Defence Corps (hereinafter referred to as the "Corps") and may appoint a person, not being, in its opinion, below the rank of a District Magistrate (to known as the "Controller") to command such Corps:

Constitu-
tion of
Civil De-
fence
Corps.

Provided that if there is in existence in any area in a State, immediately before the commencement of this Act in that area, an organisation which, in the opinion of the State Government, may be entrusted with the functions of the Corps, the State Government may, instead of constituting a separate Corps for such area, call 5 upon that organisation to take over or discharge the functions of the Corps in that area, and thereupon such organisation shall be deemed, for the purposes of this Act, to be the Corps for that area.

(2) The State Government may, for the purpose of co-ordinating the activities of the Controllers within the State, appoint a 10 Director of Civil Defence and every Controller shall comply with the directions given by such Director.

**Appoint-
ment of
members
and
officers.**

5. (1) The State Government may appoint as members of the Corps persons who are fit and willing to serve as such and the Controller may appoint any member so appointed to such office or command in the Corps, as such member is, in the opinion of the Controller, fit to hold. 15

(2) Every person appointed to be a member of the Corps shall be given a certificate of membership in such form as may be prescribed. 20

**Dismissal
of mem-
bers of
Civil De-
fence
Corps.**

6. (1) Where any member of the Corps fails or has failed, in the opinion of the Controller, to discharge his duties as such member satisfactorily or is or has been found guilty of any misconduct in the discharge of his duties as such member, the Controller may, after an inquiry in which such member of the Corps has been given 25 a reasonable opportunity of being heard in respect of the charges against him, by an order, dismiss such member from the Corps.

(2) Where the Controller is of opinion that the continued presence of any member of the Corps is undesirable, he may, without assigning any reason, summarily dismiss such member from the 30 Corps.

Appeal.

7. A member of the Corps who is dismissed from the Corps under section 6 may prefer an appeal to the State Government within thirty days from the date of such dismissal and that Government may, on such appeal, confirm, modify or reverse the order made by 35 the Controller or other authority.

**Functions
of mem-
bers of
Civil De-
fence
Corps.**

8. (1) The members of the Corps shall perform such functions in relation to the carrying out of measures for civil defence as may be assigned to them by rules made under this Act or by any other law for the time being in force

(2) The State Government or the Controller may, by order, call out a member of the Corps for training or for discharging such functions in relation to the carrying out of measures for civil defence as may be specified in such order.

5 (3) Subject to such orders as the Central Government may make in this behalf, any member of the Corps of any State may at any time be required, by order, to discharge functions in relation to civil defence in any other State and shall while discharging such functions, be deemed to be a member of the Corps of that other State and be vested with the powers, functions and privileges and be subject to the liabilities of a member of the Corps in that other State.

9. (1) The Central Government may, by notification, make regulations for carrying out the purposes of this Chapter. Power to make regulations.

15 (2) In particular, and without prejudice to the generality of the foregoing power, such regulations may—

- (a) prescribe the functions of the members of the Corps and regulate the manner in which they may be called out for service;
- 20 (b) regulate the organisation, appointment, conditions of service, discipline, accoutrement and clothing of members of any or all of the Corps;
- (c) prescribe the form of certificates of membership of any or all of the Corps.

CHAPTER IV

MISCELLANEOUS

2

10. The provisions of the Personal Injuries (Emergency Provisions) Act, 1962, and of every scheme made thereunder shall apply, so far as may be, to every personal service injury sustained by any person appointed to be a member of the Corps as they apply to personal service injury sustained by a civil defence volunteer, subject 30 to the modifications that—

(a) any reference to a civil defence volunteer under that Act or any scheme made thereunder shall be construed as reference to a member of the Corps; and

(b) any reference therein to the period of emergency shall, in relation to a member of the Corps, be construed as the period during which this Act is in force.

59 of 1962

Provi-
sions of
the Per-
sonal In-
juries
(Emer-
gency
Prov-
isions)
Act to
apply to
injuries
sustained
by the
mem-
bers of the
Corps

Penal-
ties.

11. (1) If any member of the Corps on being called out by an order under sub-section (2) of section 8 neglects or refuses without sufficient excuse to obey such order or to discharge his functions as such member or to obey any lawful order or direction given to him for the performance of his functions, he shall be punishable with fine which may extend to five hundred rupees, and where such neglect or refusal is a continuing one, with a further fine which may extend to fifty rupees for every day, after the first, during which such contravention continues. 5

(2) If any person neglects or fails without any reasonable excuse to obey any order made or direction given to him under this Act or rules made thereunder, he shall be punishable with fine which may extend to five hundred rupees, and where such negligence or failure is a continuing one, with a further fine which may extend to fifty rupees for every day, after the first, during which such negligence or 15 failure continues.

Effect of
Act and
rules, etc.,
inconsis-
tent
with other
enact-
ments.

12. (1) The provisions of this Act or any rules made thereunder or any order made under this Act or any such rule shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect 20 by virtue of any enactment other than this Act.

(2) Every appointment, order or rule made in relation to civil defence before the commencement of this Act by or under any law relating to civil defence shall, in so far as it is not inconsistent with the provisions of this Act, continue to be in force until it is rescind- 25 ed or altered under this Act, and be deemed to have been made under the corresponding provisions of this Act.

Explanation.—“Commencement of this Act”, in relation to any provision or area, means the commencement of that provision or, as the case may be, the commencement of this Act in that area. 30

Ordinary
avocations
of life to
be inter-
fered
with
as little
as possi-
ble.

13. Any authority or person acting in pursuance of this Act shall interfere with the ordinary avocations of life and the enjoyment of property as little as may be consonant with the purpose of ensuring the public safety and civil defence.

Savings
as to
orders.

14. (1) No order made in exercise of any power conferred under this Act shall be called in question in any court.

1 of 1872.

(2) Where an order purports to have been made and signed by any authority in exercise of any power conferred by or under this Act, a court shall, within the meaning of the Indian Evidence Act, 1872, presume that such order was so made by that authority.

5. 15. Nothing contained in this Act or any rule, regulation or order made thereunder shall apply to the Armed Forces of the Union or to any measures taken by any of the authorities in control of the Armed Forces of the Union for the purpose of securing civil defence or safety of such forces or for the protection of any naval, military ^{Act not to apply to measures taken for the protection of the Armed Forces.}
10 or air force installations or stores.

16. No prosecution for any offence punishable under this Act shall be instituted against any person except by, or with the consent of, the Controller or any person authorised by the Controller in this behalf. ^{Limitation of prosecutions.}

15. 17. The State Government may, by notification, direct that— ^{Power to delegate.}

(a) all or any of the powers which may be exercised by it under this Act shall, in such circumstances and under such conditions, if any, as may be specified in that notification, be exercised also by such officer, not being, in the opinion of the ²⁰ State Government, inferior in rank to that of a District Magistrate, as may be specified in the said notification;

(b) all or any of the powers which may be exercised by the Controller under this Act shall, in such circumstances and under such conditions, if any, as may be specified in that notification, be exercised also by such officer, not being in the opinion of the State Government, inferior in rank to that of a Sub-Divisional Magistrate, as may be specified in the said notification. ²⁵

18. (1) No suit, prosecution or other legal proceeding shall lie ^{Protect-}
³⁰ against the Government, the Director or the Controller or any person, authorised by the Government or the Controller, for anything which is in good faith done or intended to be done under this Act or any rules or orders made thereunder or any orders issued under any such rule. ^{tion of action taken in good faith.}

(2) No suit or other legal proceeding shall lie against the Government, the Director or the Controller or any person, authorised by the Government or the Controller, for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act or any rule made thereunder or order issued under any such rule.

Authorised persons and members of the Corps to be public servants.

Rules and regulations to be laid before Parliament.

10. Any person authorised by the Controller or the State Government under this Act and every member of the Corps, while functioning as such, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

15 of 1860

20. Every rule and every regulation made by the Central Government under this Act shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation, as the case may be, should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

STATEMENT OF OBJECTS AND REASONS

After the Chinese invasion of our country in 1962 it was felt that in order to minimise loss of life, to maintain continuity of production and to restore quickly the disrupted civic services, Civil Defence measures should be adopted in places which were the most likely target of enemy air attack. With a view to providing the necessary legal cover, a Chapter on the subject was included in the Defence of India Act, 1962 and rules for Civil Defence services were framed thereunder.

2. This law will, however, cease to be operative six months after the revocation of the emergency but the Civil Defence organisation as such has to be retained to provide the necessary machinery for raising and training the volunteers to man the various Civil Defence services and also to make other preparations so as to enable the authorities to adopt Civil Defence measures at short notice wherever necessary.

3. The Bill aims at providing for continued maintenance of Civil Defence services which are already in position in the States and Union territories. It also enables the Central Government and the State Governments to extend the scope of Civil Defence if and when it may become necessary to do so.

4. This Bill incorporates all the provisions of Chapter III of the Defence of India Act and other relevant provisions spread over other Chapters of the Defence of India Act and Rules. It also provides for payment of compensation to Civil Defence volunteers for injuries sustained while on duty.

NEW DELHI;

The 4th December, 1967.

Y. B. CHAVAN.

**PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117
OF THE CONSTITUTION OF INDIA**

[Copy of letter dated the 19th December, 1967 from Shri Y. B. Chavan, Minister of Home Affairs to the Secretary, Lok Sabha.]

The President having been informed of the subject matter of the proposed Bill to make provision for civil defence and for matters connected therewith has, in pursuance of clause (3) of article 117 of the Constitution recommended to the Lok Sabha the consideration of the Bill.

FINANCIAL MEMORANDUM

Clauses 3, 4 and 10 of the Bill provide for power to make rules for civil defence, constitution of Civil Defence Corps and payment of compensation to members of the Corps who sustain injury on duty respectively. These provisions will involve expenditure from the Consolidated Fund of India.

2. The entire expenditure on implementation of civil defence measures in Union territory Administration without Legislatures is met directly by the Central Government out of the Consolidated Fund of India and this expenditure is likely to be of the order of Rs. 13·61 lakhs non-recurring and Rs. 7·40 lakhs recurring. The expenditure in Union territories with Legislatures is indirectly borne by the Central Government by meeting their revenue gaps through grants-in-aid. This expenditure is likely to be about Rs. 1·80 lakhs non-recurring and Rs. 1 lakh recurring.

3. The expenditure on civil defence in States is initially borne by the State Governments but, later on one-half of the expenditure incurred by them on authorised items of civil defence is reimbursed to them. Besides the said reimbursement, the entire expenditure on civil defence in the State of Assam and in the five northern districts of West Bengal is also reimbursed by the Central Government. The expenditure on these reimbursements is likely to be of the order of Rs. 93·05 lakhs non-recurring and Rs. 49·60 lakhs recurring.

4. The expenditure on the provision of external air raid warning is met entirely by the Central Government. It is expected that this expenditure will be about Rs. 1 lakh per annum.

5. It will be seen from above that if the Bill is enacted the expenditure on implementation of civil defence measures from the Consolidated Fund of India would be of the order of Rs. 108·46 lakhs non-recurring and Rs. 59 lakhs recurring.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill empowers the Central Government to make rules for providing for matters connected with civil defence. These matters in respect of which rules may be made relate, *inter alia*, to the prevention of the prosecution of any work likely to prejudice civil defence; instruction of members of the public regarding civil defence and their equipment for the purposes of such defence; provision, storage and maintenance of commodities and things required for civil defence; prohibition or regulation of traffic and the use of vessels, buoys, lights and signals in ports and territorial, tidal or inland waters; control of lights and sounds; protection of life and property by taking fire prevention or other measures, etc. These matters pertain to details necessary for the effective administration of the provisions of the Bill and as such the delegation of legislative power is of a normal character.

Clause 9 of the Bill empowers the Central Government to make regulations for carrying out the purposes of Chapter III of the Bill. These purposes include the functions of the members of the Civil Defence Corps and regulation of the manner in which they may be called out for service; regulation of the organisation, conditions of service, discipline, accoutrement and clothing of members of the Civil Defence Corps and the form of certificate of membership of the said Corps. These matters also pertain to details necessary for the effective functioning of the Civil Defence Corps and as such the delegation of legislative power is of a normal character.

Clause 20 of the Bill provides that every rule and every regulation made by the Central Government under the Bill shall be laid before Parliament and shall be subject to modification by Parliament.

Clause 17 of the Bill provides for the delegation of the powers of the State Government to an officer not below the rank of the District Magistrate and the powers of the Controller to an officer not below the rank of a Sub-Divisional Magistrate under such conditions and restrictions as may be specified in the notification whereby such delegation of powers is made. This delegation of powers pertains to procedure necessary for the effective administration of the provisions of the Bill and as such the delegation of the powers is of a normal character.

S. L. SHAKDHER,
Secretary